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MAY 31 2008

Ref: 8EPR-N

Thomas Malecek
District Ranger, Divide District
Rio Grande National Forest
13308 West Highway 160
Del Norte, CO 81132

RE: Wolf Creek Village Easement FEIS
CEQ# 20060123

Dear Mr. Malecek:

This letter is written in response to the US Forest Service's (USFS) Final Environmental Impact Statement (FEIS) analyzing the Village at Wolf Creek on the Rio Grande National Forest. The Region 8 Office of the Environmental Protection Agency (EPA) is providing these comments in accordance with our responsibilities under the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321, et. seq., and Section 309 of the Clean Air Act. EPA has reviewed this FEIS focusing primarily on the response to our comments on the Draft.

With respect to development of the Village, EPA acknowledges that USFS is, for the most part, not in a regulatory position. While we are concerned with the potential for significant adverse environmental impacts of developing the Village at the magnitude currently proposed, EPA acknowledges the right of the property owner to the use of the property consistent with applicable regulation and policy. We are pleased that the FEIS includes additional information, though largely qualitative, regarding the likely impacts of the proposed development in a sensitive environment. We recognize the FEIS includes a substantial analysis of the highway improvements and related impacts that would be required of this development. The FEIS also includes improved air quality analysis to assess the effects from vehicle emissions and wood burning stoves.

We specifically thank the USFS for hosting an interagency meeting to develop a shared understanding of the proposed project, and bring together all of the agencies. These agencies were able to make informed comments on the project and were able to prepare for their individual roles in permitting the project. As a result of that meeting, this FEIS serves a valuable public purpose by laying out the permitting decisions that will



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follow this decision as well as presenting a list of potential mitigation for many of the expected resource impacts (Appendix D).

No Action Alternative

As stated in EPA's Draft EIS comments, some basic assumptions regarding development of the Village in the No Action alternative do not appear reasonable and are unsupported by examples of similar developments with such access restrictions. We find the FEIS and Response to Comments essentially unchanged regarding these No Action assumptions. The No Action assumptions result in a lack of analysis of indirect impacts from the alternatives considered. As we have communicated to the USFS on several occasions, EPA maintains the conclusion that Village development would necessarily be significantly different without utility access and improved road access. We note several examples of how this development would likely differ without improved access:

- The development would be unable to import power without utility access, and the on-site, Liquid Natural Gas (LNG) power plant would not likely be feasible without winter road access. This would appear to leave this 2000 unit development without a power supply. It is not clear whether, even in summer, the existing Forest Service Road would allow hazardous material (i.e. LNG) transport, especially given its proximity to ski facilities.
- Current access to Highway 160 is insufficient to support this level of development. Further, it is not clear that LNG transport would be approved on Highway 160 without improved highway access.
- Over-snow access may be insufficient to allow emergency egress from the 2000 unit village, and may be insufficient to allow safe operation and maintenance of Village support facilities.

It is therefore not clear that "no law, regulation, or policy prohibits the Applicant from developing the Village in a manner and scale as discussed in the EIS (p. E8-31). The FEIS appropriately states, "*any* [emphasis added] future development of the Village is not contingent on the USFS granting additional Federal access road and utility corridors" (p. E8-7). However, EPA concluded in our comments on the DEIS that the *type* and *intensity* of development would necessarily be different without such access. Likewise, the types and intensity of impacts would reasonably be expected to differ. The developer has asserted that development of the Village would happen unchanged even in the No Action Alternative; essentially that reasonable use and enjoyment of the parcel can be realized without approving a utility corridor and road improvements. The decision maker would have benefited from an analysis of the different magnitude of impact between the No Action and the Action alternatives.

Use Designation

Prior to issuing a decision on whether to grant improved access to this in-holding, the USDA defined the "reasonable use and enjoyment" of the private parcel as being consistent with "the Mineral County Final PUD for the private property." It is unclear why this decision was not considered a "major federal action" subject to NEPA and

public review. It appears that the action of designating reasonable use and enjoyment is a land management decision with potentially significant indirect effects. In this case, the two access roads to this in-holding would not be necessary but for the determination of reasonable use and enjoyment. The EIS makes a clear case that impacts to USFS lands from development of this parcel to the specifications in the PUD would be significant. There may have been other reasonable uses, or less intense development, that could have avoided many of the effects anticipated from this development. If it is allowed under the Alaska National Interest Lands Conservation Act (ANILCA), we encourage the USFS to consider implementing a public NEPA process on future projects when determining "reasonable use and enjoyment," particularly in cases where that determination itself could lead to significant effects to Forest resources and the human environment.

Wetlands

The FEIS is an improvement over the DEIS in acknowledging potential wetland impacts associated with the Village. The FEIS predicts impacts and discusses the limits of Federal law to protect wetlands that are not impacted by direct fill, or wetlands that may be outside the jurisdiction of the Clean Water Act. The FEIS does not fully assess the magnitude of possible impacts or the uncertainty of protecting these critical wetland resources. EPA acknowledges the proponent's intent to avoid filling wetlands and the resulting lack of need for a Clean Water Act Section 404 permit at this time. However, given the extent and location of wetlands and other aquatic resources on the site, it seems likely that a development of the proposed magnitude will include discharges to waters of the United States. EPA believes that the wetland complex and surrounding lands within the project area are highly sensitive to perturbation and even without placing fill material in wetlands, a development of this magnitude will have significant and irretrievable impacts. We offer to assist the proponent and the USFS in conducting a hydrologic assessment that would support designing the development to minimize impacts to ground water, surface water and wetlands.

The FEIS does include a qualitative discussion of impacts to hydrologic conditions in Appendix A. However, not enough is known about the site hydrology and it is not currently possible to quantitatively evaluate the specific impacts to wetlands and aquatic resources from development of the upland areas. Based on our experiences with similar recreational/resort developments in mountain environments, development in "uplands" typically results in significant alteration of site hydrology and adverse impacts to aquatic resources (in this case both on the private parcel and on USFS lands). EPA believes in the need for a detailed study of site hydrology to predict and guide the mitigation of these impacts. Our specific concerns and recommendations were detailed in a January 17, 2006 letter from EPA's Ecosystems Protection Program to the USFS and Army Corps of Engineers (enclosed). Because the FEIS acknowledges that on-site development will have off-site impacts outside the USFS's ability to control, we ask the USFS join us in support of the need for this hydrologic study.

The errata sheet for this FEIS (attached to a transmittal letter dated April 21, 2006) incorrectly states that "... provisions of the Clean Water Act and 404 permitting ..."

could protect willow habitats including potential disruption of ground water recharge that support wetlands. It should be noted that many willow riparian areas, while acknowledged to be important wetland types, MAY not meet the basic three-parameter test for wetland designation and hence not be protected under the Clean Water Act. Also, disruption of ground water flows are generally not protected under the Clean Water Act unless there is an associated Section 404 permitted activity. In other words, there could be numerous activities that adversely impact willow areas and ground water recharge to wetlands that may not be regulated under the Clean Water Act (including Section 404).

The Record of Decision includes a second access road to the Village from Highway 160. This access road enters the Village property at an area with a large wetland complex. This road does not appear on the current PUD, and the EIS does not include a description or engineering concept of how this road will fit in with the PUD. While the FEIS and CDOT make a clear case that a second access road is necessary to support a development of this magnitude at this location, EPA is concerned that the second road will enter the parcel in an area surrounded by wetlands. This road must cross wetlands and make a significant elevation gain after entering the property. The engineering feasibility and cost of this route was not assessed for the Village parcel in the FEIS. While the FEIS acknowledges the direct effects to USFS lands from the second access road, there will also be indirect effects to resources from that were not quantitatively assessed in the FEIS.

We offer the following detailed wetland comments and corrections:

- The most recent wetland delineation (Ecological Resources 2005) also identified soils indicative of fens (p. 3-6)
- The discussion on wetlands neglected to note that the current wetland delineation identified some wetlands as "isolated" and therefore potentially not protected under Section 404 of the Clean Water Act (p. A-14)
- While the potential use of Nationwide Permits is discussed, it should be noted that the Corps of Engineers has the discretionary authority to require an Individual Permit for projects that may otherwise qualify for a Nationwide Permit. This is often the case where valuable and sensitive fen-type wetlands are present.
- EPA appreciates the addition of APPENDIX D but we note that a critical EPA authority was not identified (p. D-5). Section 404(c) of the Clean Water Act, often referred to as EPA's 404 "veto" authority, allows EPA to "... prohibit the specification of any defined areas as a disposal site ..." in other words, not allow the placement of fill in the specified site.
- Appendix D should also have noted that the Clean Water Act provides authority to both EPA and the Corps of Engineers to take enforcement actions in response to un-permitted discharges to waters of the United States including wetlands.
- The Record of Decision (p. 40) states, "Wetlands protection falls under the jurisdiction of other agencies, primarily the ACOE and wetlands will be protected through that agency's permitting process. Only those impacts allowed through

permitting would occur." As stated above, wetlands can be significantly impacted through hydrologic alteration associated with upland development without triggering the authorities of ACOE or EPA.

Water Quality and Aquatic Habitat

We found no water quality data presented or discussed for the North and South Branches of Pass Creek. It is important that the USFS collect baseline conditions, if they do not exist, for both water quality and aquatic habitat in these streams prior to the start of development. This information is especially critical given the location of the proposed development in the headwaters of the Rio Grande River. These data will be useful in evaluating the effectiveness of point source and non-point source discharges from the Village, and will therefore enable improvements to mitigating these impacts.

It should be noted as this project moves forward that, at full build-out, more than fifty percent of the project area would be converted to impervious land surface. This will greatly reduce infiltration of snowmelt and rainfall thereby decreasing ground water recharge and increasing runoff. These factors will contribute to loss of wetlands and wetland function, sedimentation in stream channels and destabilized stream banks both within the Village parcel and downstream.

Conclusion

Overall, we found that this Final EIS addressed most of our concerns with the analysis in the Draft EIS and included substantial improvements in analysis for many issues raised by commenters. We remain concerned that the analysis is limited by the basic assumptions in the No Action alternative, and that those assumptions may have precluded the development and analysis of less damaging alternatives or more effective mitigation of impacts. If you have any questions or would like to discuss our comments, please contact me (303-312-6004) or Phil Strobel (303-312-6704) of my staff.

Sincerely,



Larry Svoboda
Director, NEPA Program
Office of Ecosystems Protection and Remediation

Enclosure